

Response to Comments for Shakopee Mdewakanton Sioux Community of Minnesota
Mystic Lake Casino Hotel
After-the-Fact Air Quality Construction Permit
Permit No. MIN-SM-27139R0001-2013-02

On February 27, 2014, the U.S. Environmental Protection Agency issued for public comment a draft after-the-fact Air Quality Construction Permit, permit number MIN-SM-27139R0001-2013-02, for the Mystic Lake Casino Hotel, located in Prior Lake, Minnesota. The public comment period ended on May 12, 2014.

This document provides a summary of all comments received during the public comment period and EPA's response. This document also lists any changes made to the permit or technical support document (TSD).

Comments from Ms. Beverly Koehnen, March 28, 2014

During the public comment period, EPA received several comments from Ms. Beverly Koehnen. The letter is dated March 28, 2014.

Ms. Koehnen's comment 1:

In her letter, Ms. Koehnen made this comment with respect to public participation for the current permitting action:

I did go to the Prior Lake Library to look at the documents. After a diligent search by the librarians, they could not find the documents on the shelves. They said they had been received and cataloged, so someone apparently had taken them, even though the documents were supposed to be left at the library for others to see. As result, I am unable to comment on them specifically.

EPA's response to Ms. Koehnen's comment 1:

40 C.F.R. § 49.157 establishes the public notice requirements for synthetic source permits issued pursuant to 40 C.F.R. Part 49. Particularly, 40 C.F.R. § 49.157(b)(1) requires the reviewing authority, in this case EPA, to prepare a draft permit and provide adequate public notice to ensure that the affected community and the general public have reasonable access to the application and draft permit information according to certain criteria. The criteria is summarized as follows:

- 1.) EPA must mail a copy of the notice to the permit applicant, the Indian governing body, and the tribal, state, and local air pollution authorities having jurisdiction adjacent to the area that could be potentially impacted by the air pollution source; and
- 2.) EPA must use appropriate means of notification that accounts for the size of the source, local air quality considerations, and the characteristics of the population in the

affected area. Examples of appropriate means of notification include mailing or emailing the notice to persons on a mailing list, posting the notification on its website, publishing the notice in a newspaper of general circulation in the area and/or a tribal newspaper or newsletter, providing the notice at gathering places in the community such as a public library, or other means that EPA deems appropriate.

To fulfill the public participation requirements for this permit, EPA mailed the public notice, draft permit, and supporting documents to the permit applicant, the Indian governing body, and affected tribal, state, and local air pollution authorities on February 19, 2014. EPA mailed a paper copy of the application, draft permit, and supporting documents to the Prior Lake branch of the Scott County Library on February 19, 2014. EPA published the public notice in two newspapers in the area: the Prior Lake American on February 22, 2014, and the Shakopee Valley News on February 27, 2014. EPA also posted an electronic copy of the application, draft permit, supporting documents, and the public notice on its website. The public notice document itself included the internet address where the permit documents are available for review.

Although EPA provided a copy of the draft permit documents for inspection at a local library, the documents were unavailable to members of the public. Since the documents were unavailable, reasonable access to the application and the draft permit documents was unavailable to Ms. Koehnen and possibly other members of the public during the public comment period.

The ability for some members of the public to participate in the notice and comment period for this draft permit was negatively affected. EPA believes that public participation is an important component of the permitting process. As a result, EPA extended the public comment period by 30 days, ending on May 12, 2014. EPA also mailed a complete set of permit documents to Ms. Koehnen and to the Prior Lake branch of the Scott County Library.

No changes to the permit or the TSD have been made as a result of this comment.

Ms. Koehnen's comment 2:

In her letter, Ms. Koehnen asks who will monitor the air in the area and whether EPA will monitor the air.

EPA's response to Ms. Koehnen's comment 2:

On pages 1 and 2 of the draft TSD, EPA explains that Mystic Lake Casino Hotel is located on lands held in trust by the United States government for the Shakopee Mdewakanton Sioux Community. Since the facility is located on lands held in trust by the government, EPA is responsible for permitting and enforcing any air quality construction permits. The permit, once issued, will establish federally-enforceable annual operating restriction and emission limits for the engines at the facility. Monitoring, periodic testing, recordkeeping, and reporting requirements designed to ensure compliance with the operating and emission limits are included in the permit. If there are any concerns regarding Mystic Lake Casino Hotel's compliance with permit terms and conditions, you may contact the EPA Region 5's Air Enforcement and Compliance Assurance Branch at (312) 353-2088 for further assistance.

No changes to the permit or the TSD have been made as a result of this comment.

Ms. Koehnen's comment 3:

In her letter, Ms. Koehnen voiced concerns with emissions from a nearby compost site and another industrial operation that is unknown to her.

EPA's response to Ms. Koehnen's comment 3:

EPA understands that emission from nearby facilities may be concerning. However, EPA can only respond to comments about the current permitting action in this response to comments document. If there are any concerns about emission from nearby facilities, you may contact the EPA Region 5's Air Enforcement and Compliance Assurance Branch at (312) 353-2088 for further assistance.

No changes to the permit or the TSD have been made as a result of this comment.

Comments from Shakopee Mdewakanton Sioux Community (SMSC)

During the public comment period, EPA received comments on the Mystic Lake Casino Hotel permit from the Shakopee Mdewakanton Sioux Community (SMSC).

SMSC comment 1:

SMSC requests that the contact information in the TSD be updated to the following:

“Charlie Vig, Tribal Chairman phone #: 952-496-6109

EPA's response to SMSC's comment 1:

EPA will update the TSD for the final permit with the requested contact information.

SMSC comment 2:

SMSC submitted comments on the draft construction permit for New Little Six Casino, permit number MIN-SM-27139R0005-2013-01, that affect the Mystic Lake Casino Hotel permit.

EPA's response to Ms. Koehnen's comment 2:

The draft New Little Six Casino permit, as well as a construction permit for Dakota! Sport and Fitness, each had a public comment period that ran concurrently with the draft Mystic Lake Casino Hotel permit. All comments made on the New Little Six Casino permit will be addressed in the New Little Six Casino's response to comments document. This document will address the comment that affects the Mystic Lake Casino Hotel permit specifically.

SMSC comment 3:

SMSC's specific comment applicable to the Mystic Lake Casino Hotel draft permit reads as follows:

Permit condition 2.0.A.1.iii on page 5 of the New Little Six Casino permit states:

Limit fuel usage to diesel fuel with a minimum cetane index of 40, or maximum aromatic content of 35 volume percent. [40 C.F.R. §§ 60.4207(b) and 80.510(b)]

Neither of the other two permits have this condition. The condition references 40 C.F.R. §§ 60.4207(b) which is the sulfur requirement for fuel and does not provide the basis for this condition. The other citation, 40 C.F.R. § 80.510(b), is a requirement for manufacturers of diesel and suppliers of diesel fuel. This condition should be removed to be consistent with the other two permits.

EPA's response to SMSC's comment 3:

In the TSD for the Mystic Lake Casino Hotel permit, EPA determined that the generators are subject to 40 C.F.R. Part 63, Subpart ZZZZ: National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines (RICE MACT). Since generators 104, 113, 114 and 115 were manufactured after June 12, 2006, they are classified as new stationary RICE under the RICE MACT. In order to meet the requirements of the RICE MACT, EU 104, 113, 114 and 115 must meet the requirements of 40 C.F.R. Part 60, Subpart IIII: Standards of Performance for Stationary Compression Ignition Internal Combustion Engines.

Under NSPS Subpart IIII, EPA determined that EU 104, 113, 114, and 115 are non-emergency, stationary, compression-ignition, internal combustion engines with a displacement of less than 30 liters per cylinder. Since EU 104, 113, 114, and 115 each have a displacement of less than 30 liters per cylinder, EPA determined that 40 C.F.R. § 60.4207(a) and (b) apply to these engines. Owners and operators of stationary compression-ignition (CI) internal combustion engines must comply with 40 C.F.R. § 60.4207 if they are subject to NSPS Subpart IIII.

In particular, 40 C.F.R. § 60.4207(a) and (b) read as follows:

(a) Beginning October 1, 2007, owners and operators of stationary CI ICE subject to this subpart that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(a).

(b) Beginning October 1, 2010, owners and operators of stationary CI ICE subject to this subpart with a displacement of less than 30 liters per cylinder that use diesel fuel must use diesel fuel that meets the requirements of 40 CFR 80.510(b) for nonroad diesel fuel, except that any existing diesel fuel purchased (or otherwise obtained) prior to October 1, 2010, may be used until depleted.

Since the permits are being issued after October 1, 2010, the requirements of 40 C.F.R. § 60.4207(b) apply. In particular, 40 C.F.R. § 60.4207(b) requires owners and operators of stationary CI ICE using diesel fuel to use diesel fuel that meets the requirements of 40 C.F.R. § 80.510(b) for nonroad diesel fuel.

40 C.F.R. § 80.510(b) reads as follows:

(b) *Beginning June 1, 2010.* Except as otherwise specifically provided in this subpart, all NR and LM diesel fuel is subject to the following per-gallon standards:

(1) Sulfur content.

- (i) 15 ppm maximum for NR diesel fuel.
- (ii) 500 ppm maximum for LM diesel fuel.

(2) Cetane index or aromatic content, as follows:

- (i) A minimum cetane index of 40; or
- (ii) A maximum aromatic content of 35 volume percent.

According to 40 C.F.R. § 80.2 “NR” stands for “nonroad” while “LM” stands for “locomotive or marine.” As mentioned previously, 40 C.F.R. § 60.4207(b) requires owners and operators of diesel CI ICE to use diesel fuel that meets the requirements for nonroad diesel fuel at 40 C.F.R. § 80.510(b). 40 C.F.R. § 80.510(b)(1)(i) establishes the sulfur requirement for diesel fuel for nonroad engines. 40 C.F.R. § 80.510(b)(2), where the cetane index or aromatic content requirement is established, applies to both nonroad and locomotive or marine engines.

EU 104, 113, 114, and 115 are subject to the fuel requirements of 40 C.F.R. § 60.4207(b). Since this condition requires the diesel fuel used in EU 104, 113, 114, and 115 to comply with the fuel requirements of 40 C.F.R. § 80.510(b), EPA determined that both the sulfur content and cetane index or aromatic content requirements apply to the diesel fuel used by EU 104, 113, 114, and 115. EOA determined in the TSD for the draft Mystic Lake Casino Hotel permit that 40 C.F.R. § 60.4207(b) applies.

SMSC’s comment says that 40 C.F.R. § 60.4207(b) is a sulfur requirement for fuel and does not provide the basis for the cetane index or aromatic content condition in 40 C.F.R. § 80.510(b). EPA agrees that 40 C.F.R. § 60.4207(b) contains sulfur requirements for diesel fuels. EPA disagrees that the condition does not provide the basis for this condition. As mentioned previously, 40 C.F.R. § 60.4207(b) specifically requires owners and operators to use diesel fuel that complies with the nonroad diesel fuel standards at 40 C.F.R. § 80.510(b), with an exception for diesel fuel purchased prior to October 1, 2010.

SMSC also says in its comment that 40 C.F.R. 80.510(b) is a requirement for manufacturers and suppliers of diesel fuel. While this is true to the extent that manufacturers and suppliers of diesel fuel must create or supply diesel fuel that meets these standards for use in CI ICE, EPA disagrees that the fuel requirements in 40 C.F.R. § 80.510(b) apply only to manufacturers or suppliers of diesel fuel. As mentioned previously, 40 C.F.R. § 60.4207(b) requires owners and operators to use diesel fuel that meets the diesel fuel standards for nonroad engines in 40 C.F.R. § 80.510(b).

EPA interprets this to mean that diesel fuels used in CI ICE must have a sulfur content of no more than 15 ppm and either a minimum cetane index of 40 or a maximum aromatic content of 35 volume percent.

SMSC's comment requests that the cetane index or aromatic content requirements be removed from the New Little Six Casino permit for consistency with the Dakotah! Sport and Fitness and Mystic Lake Casino Hotel permits. Unlike the Dakotah! Sport and Fitness permit, the Mystic Lake Casino Hotel permit contains the cetane index requirement. For the reasons previously discussed in the response to this comment, EPA disagrees that this condition should be removed from the New Little Six Casino and the Mystic Lake Casino Hotel permits.

No changes will be made to the Mystic Lake Casino Hotel permit as a result of this comment.

Changes to the permit and TSD

- 1.) In response to SMSC comment 1, EPA is changing page 1 of the TSD to update the contact information for the responsible official to the following:

Responsible Official: Charlie Vig, Tribal Chairman
2330 Sioux Trail NW
Prior Lake, Minnesota 55372
Phone: (952) 496-6109

EPA believes that the addition of this requirement would not require another public comment period because this does not add, remove, or change any permit requirements.